



This document is scheduled to be published in the Federal Register on 02/24/2016 and available online at <http://federalregister.gov/a/2016-03860>, and on FDsys.gov.

[Billing Code: 4810–31–P]

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2015–0007; T.D. TTB–133; Ref: Notice No. 151]

RIN: 1513–AC17

Establishment of the Lamorinda Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 29,369-acre “Lamorinda” viticultural area in Contra Costa County, California. The viticultural area lies entirely within the larger San Francisco Bay viticultural area and the multicounty Central Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jesse Longbrake, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 066.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;

- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Lamorinda Petition

TTB received a petition from Patrick L. Shabram, on behalf of the Lamorinda Wine Growers Association, proposing the establishment of the “Lamorinda” AVA. The proposed Lamorinda AVA is located in Contra Costa County, California, and contains the cities of Lafayette, Moraga, and Orinda. The proposed viticultural area lies in the northeast portion of the established San Francisco Bay AVA (27 CFR 9.157) and also within the larger, multicounty Central Coast AVA (27 CFR 9.75).

The proposed AVA covers approximately 29,369 acres and has 46 commercially-producing vineyards that cover approximately 139 acres. The petition states that the individual vineyards are small, each covering less than 5 acres, due to the hilly terrain and the largely suburban nature of the region. However, three much larger commercial vineyards covering a total of 130 acres

are either in the early development or public review stages. There are also six bonded wineries currently within the proposed AVA.

According to the petition, the distinguishing features of the proposed Lamorinda AVA are its topography, geology, soils, and climate. The terrain of the proposed AVA is composed of moderate-to-steep hills with narrow valleys. The steep hillsides prevent the use of machinery for vineyard work within the proposed AVA, requiring instead that the work be done by hand. The proposed AVA is suitable for both cool- and warm-climate varieties because the hilly terrain results in disparate levels of sunlight at different elevations. The terrain of the proposed AVA contrasts with the steeper, more rugged terrain to the south and west and the lower, flatter plains to the north and east. Additionally, the proposed Lamorinda AVA is characterized by a distinct suburban land use pattern which tends to provide property owners with enough room to plant vineyards large enough for commercial viticulture. This contrasts with the more urban and densely populated areas to the east and west.

The dominant geological formation of the proposed Lamorinda AVA is the Orinda Formation, while the Briones and Mulholland Formations are also present. These underlying geological formations affect viticulture in the proposed AVA due to their role in forming the soils of the region. Other geographic formations dominate the surrounding area.

The soils of the proposed AVA have high levels of clay attributable to the weathering of the clay-rich Orinda Formation. Typically, clay-rich soils have high water-holding capacities, but within the proposed AVA the thinness of the soils,

steepness of terrain, and presence of sand in the soils allow rapid runoff of excess water. These features reduce the risk of vineyard diseases and rot normally associated with soils with high water-holding capacities. In contrast to the clay-rich soils of the proposed AVA, the soils to the west, south, and southeast are characterized by sedimentary and volcanic materials; soils to the north are typically fine-grained bay mud; and soils to the east are characterized by deeper, coarser alluvial deposits.

Finally, the proposed Lamorinda AVA generally has a warmer climate than the surrounding areas to the north, south, and west. The high ridgelines present to the north and west of the proposed AVA limit the amount of cool marine air and fog that enters the region from San Francisco Bay, San Pablo Bay, and Suisun Bay, resulting in higher growing degree day (GDD)¹ accumulations within the region. This allows vineyards in the proposed AVA to support slower-maturing varieties of grapes which require longer growing seasons. The regions to the north, south, and west are more exposed to marine air and fog and have lower GDD accumulations than the proposed AVA. The area due east and further inland from the proposed AVA receives less marine air and fog, and experiences higher GDD accumulations than the proposed AVA.

¹ In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. See Albert J. Winkler, General Viticulture (Berkeley: University of California Press, 1974), pages 61–64.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 151 in the **Federal Register** on April 14, 2015 (80 FR 19895), proposing to establish the Lamorinda AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 151.

In Notice No. 151, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed Lamorinda AVA's location within the existing San Francisco Bay AVA and the larger, multicounty Central Coast AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing San Francisco Bay AVA and the larger, multicounty Central Coast AVA. Finally, TTB requested comments on whether the geographic features of the proposed AVA are so distinguishable from the surrounding San Francisco Bay AVA and the larger, multicounty Central Coast AVA that the proposed Lamorinda AVA should no longer be part of the established AVAs. The comment period closed June 15, 2015.

Comments Received

In response to Notice No. 151, TTB received a total of 12 comments. Commenters were primarily local residents and members of the wine industry from the Lamorinda region, including vineyard owners, winemakers, and a retail wine shop proprietor. Commenters also included wine industry members from outside of the Lamorinda region who work with Lamorinda-based industry members in various capacities. All of the comments generally supported the establishment of the proposed AVA due to the unique microclimates, soils, and geology of the Lamorinda region. Comments also emphasized the strong sense of community identity and commitment to local wines in Lamorinda, and suggested that the establishment of the Lamorinda AVA will help Lamorinda consumers to identify and buy local wines. Further, some comments noted that because the San Francisco Bay and Central Coast AVAs are so large and diverse, they do not necessarily reflect the specific characteristics of Lamorinda grapes and wines, and as a result, establishing the Lamorinda AVA will help wine industry members in the region differentiate themselves from others within the larger AVAs.

The comments did not raise any new issues concerning the proposed Lamorinda AVA, and TTB received no comments opposing its establishment. TTB received one comment (comment 3) in response to its question of whether the proposed Lamorinda AVA is so distinguishable from the established San Francisco Bay AVA and the Central Coast AVA that the proposed AVA should not be part of the established AVAs. While the commenter noted his belief that

the proposed AVA's combination of climate, soil, and topography is different from most, if not all, other winegrowing areas in the San Francisco Bay and Central Coast AVAs, the commenter supported finalizing the rulemaking as proposed in the interest of the expedient establishment of a Lamorinda AVA.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 151, TTB finds that the evidence provided by the petitioner supports the establishment of the Lamorinda AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the "Lamorinda" AVA in Contra Costa County, California, effective 30 days from the publication date of this document.

TTB has also determined that the Lamorinda AVA will remain part of the established San Francisco Bay AVA and the larger, multicounty Central Coast AVA. As discussed in Notice No. 151, both the San Francisco Bay AVA and the Lamorinda AVA are characterized by climates heavily influenced by marine air and fog from San Francisco Bay and the Pacific Ocean. However, as compared to other portions of the San Francisco Bay AVA, the Lamorinda AVA is more isolated from cool marine air due to the higher surrounding elevations and is also less affected by the heavy diurnal fog that characterizes the more coastal portions of the San Francisco Bay AVA.

Further, as discussed in Notice No. 151, the large, 1 million-acre Central Coast AVA is only distinguished by the fact that all of its included counties

experience marine climate influence due to their proximity to the Pacific Ocean. The Lamorinda AVA is located within the Central Coast AVA and, like the larger AVA, experiences mild marine breezes and nocturnal marine fog. However, due to its much smaller size, the proposed AVA has greater uniformity in geographical features such as topography, temperature, and soils, than the larger, multicounty Central Coast AVA.

Boundary Description

See the narrative description of the boundary of the Lamorinda AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new

label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, “Lamorinda,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name “Lamorinda” in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Lamorinda AVA will not affect any existing AVA, and any bottlers using “San Francisco Bay” or “Central Coast” as an appellation of origin or in a brand name for wines made from grapes grown within the San Francisco Bay AVA or the Central Coast AVA, respectively, will not be affected by the establishment of this new AVA. The establishment of the Lamorinda AVA will allow vintners to use “Lamorinda”, “San Francisco Bay”, and “Central Coast” as appellations of origin for wines made primarily from grapes grown within the Lamorinda AVA if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts

and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Jesse Longbrake of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.254 to read as follows:

§ 9.254 Lamorinda.

(a) Name. The name of the viticultural area described in this section is “Lamorinda”. For purposes of part 4 of this chapter, “Lamorinda” is a term of viticultural significance.

(b) Approved maps. The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Lamorinda viticultural area are titled:

- (1) Walnut Creek, CA, 1995;
- (2) Las Trampas Ridge, CA, 1995;
- (3) Oakland East, CA, 1997; and
- (4) Briones Valley, CA, 1995.

(c) Boundary. The Lamorinda viticultural area is located in Contra Costa County, California. The boundary of the Lamorinda viticultural area is as described below:

(1) The beginning point is on Walnut Creek map at the water tank (known locally as the Withers Reservoir) at the end of an unnamed light-duty road known locally as Kim Road, in the Cañada del Hambre y Las Bolsas Land Grant.

(2) From the beginning point, proceed south-southeast in a straight line approximately 0.8 mile to the 833-foot peak marked “Hump 2;” then

(3) Proceed southeast in a straight line approximately 1.7 miles to the marked 781-foot peak south of the shared Lafayette–Walnut Creek corporate boundary line and north of an unnamed light-duty road known locally as Peaceful Lane; then

(4) Proceed southeast in a straight line approximately 0.3 mile to the marked 610-foot peak southwest of an unnamed light-duty road known locally as Secluded Place; then

(5) Proceed south-southwest in a straight line approximately 1.7 miles to an unidentified benchmark at the end of an unnamed unimproved road known locally as Diablo Oaks Way in section 33, T1N/R2W; then

(6) Proceed southeast in a straight line approximately 0.5 mile, crossing onto the Las Trampas map, and continuing another 0.9 mile to the substation at the southeast corner of section 4, T1S/R2W; then

(7) Proceed southeast in a straight line approximately 2.3 miles to the 1,827-foot summit of Las Trampas Peak, section 22, T1S/R2W; then

(8) Proceed south-southeast in a straight line approximately 2.1 miles to the 2,024-foot benchmark marked "Rock 2" in section 26, T1S/R2W; then

(9) Proceed west-southwest in a straight line approximately 2.7 miles to the marked 1,057-foot peak in section 29, T1S/R2W; then

(10) Proceed west-southwest in a straight line approximately 2 miles to the intersection of the 1,000-foot elevation line with the Contra Costa–Alameda County line in section 31, T1S/R2W; then

(11) Proceed northwest in a straight line approximately 0.4 mile, crossing onto the Oakland East map, then continuing another 0.1 mile to the 1,121-foot peak in section 30, T1S/R2W; then

(12) Proceed northwest in a straight line approximately 3.6 miles to the 1,301-foot peak in section 15, T1S/R3W; then

(13) Proceed northwest in a straight line approximately 1.6 miles to the 1,634-foot peak in section 9, T1S/R3W; then

(14) Proceed northwest in a straight line approximately 2.2 miles to the communication tower on the Contra Costa–Alameda County line in section 5, T1S/R3W; then

(15) Proceed north in a straight line approximately 0.1 mile, crossing onto the Briones Valley map, then continuing another 0.6 mile to the 1,905-foot summit of Vollmer Peak in the El Sobrante Land Grant; then

(16) Proceed north-northeast in a straight line approximately 3 miles, crossing over to the 1,027-foot peak in the Boca de la Cañada del Pinole Land Grant, to the Orinda corporate boundary line; then

(17) Proceed generally east along the Orinda corporate boundary line approximately 3.3 miles to the water tank at the 1,142-foot elevation in the Boca de la Cañada del Pinole Land Grant; then

(18) Proceed east-northeast in a straight line approximately 1.2 miles to the 1,357-foot benchmark marked “Russell” in the Boca de la Cañada del Pinole Land Grant; then

(19) Proceed northwest in a straight line approximately 0.8 mile to the 1,405-foot peak in the Boca de la Cañada del Pinole Land Grant; then

(20) Proceed east-northeast in a straight line approximately 0.5 mile, crossing onto the Walnut Creek map, then continuing another 1.1 miles to the beginning point.

Signed: January 11, 2016.

John J. Manfreda,

Administrator.

Approved: January 22, 2016.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

[FR Doc. 2016-03860 Filed: 2/23/2016 8:45 am; Publication Date: 2/24/2016]